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Dear Ms. Macaluso:

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On behalf of The Council of State Governments' Midwestern Radioactive Materials Transportation Committee, we are writing to provide the collective comments of the Midwestern states on OCRWM's Notice of Revised Proposed Policy regarding the implementation of Section 180(c) of the Nuclear Waste Policy Act (NWPA), published July 23, 2007, in the *Federal Register*. Our detailed comments are attached.

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The committee consists of executive agency officials and state legislators representing the 12 Midwestern states: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin. The majority of our states will be traversed by shipments of commercial spent nuclear fuel headed to Yucca Mountain. As a result, the Midwestern states are very much interested in the development of OCRWM's transportation system. As an active member of the Section 180(c) Topic Group of the Transportation External Coordination Working Group, the committee played an important role in helping to develop the discussion papers that informed the draft notice.

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We appreciate the opportunity to comment on OCRWM's plans with regard to Section 180(c) implementation. If you have any questions regarding the committee's comments, please contact Lisa R. Janairo of the CSG Midwest staff at (920) 458-5910.

Sincerely,

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enclosure

**The Council of State Governments
Midwestern Radioactive Materials Transportation Committee**

Comments on DOE's Notice of Revised Proposed Policy and Request for Comments
Safe Routine Transportation and Emergency Response Training; Technical Assistance and Funding
(*Federal Register*, Vol. 72, No. 140, pp. 40139-40145)

General Comments

The Midwest is pleased that the revised draft policy and procedures reflects so much of the input provided by the Section 180(c) Topic Group of DOE's Transportation External Coordination Working Group. The states in the region urge DOE to address three additional recommendations from the topic group that did not appear in the revised draft:

- The Topic Group recommended that DOE commit to funding the same kind of transportation safety programs that are in place for WIPP shipments. The Topic Group's discussion paper cited the Nuclear Waste Policy Act, which established the Nuclear Waste Fund to "... ensure that the costs of carrying out activities relating to the disposal of such waste and spent fuel will be borne by the persons responsible for generating such waste and spent fuel." The Midwest feels strongly that DOE needs to work with the states to develop a plan for funding activities related to operations. Without such funding, it will be difficult for states to conduct important activities like state inspections, real-time monitoring of shipments, and public information campaigns.
- The Topic Group recommended that DOE issue a policy and then promulgate a rule for implementation of the policy and grant application. The Midwest favors an eventual rulemaking for the Section 180(c) policy and procedures as a means for preserving the system DOE is setting up. With such high turnover in management positions within OCRWM, it is important to make sure the policy and procedures are not revisited whenever there is a change in leadership.
- The Topic Group recommended that the policy and procedures address contingency re-routing so that the states and tribes will have some assurance that shipments will proceed safely even if circumstances require the use of different routes. Specifically the topic group recommended that, "in the event of unforeseen circumstances, DOE will make funds available, if necessary, and work with state, local and tribal governments as necessary to reach a mutually acceptable solution."

The draft notice does not address what will happen to a state's 180(c) funding in the event of a lapse in shipments through that state. Consistent with the Topic Group's recommendation, the Midwestern states feel strongly that, to provide continuity of effort, funding should not cease or diminish during shipment lapses of less than four years. It is difficult to ramp up activities and provide training on short notice. This type of effort must be maintained.

Finally, in the event that a national repository is further delayed or abandoned, DOE should take the necessary steps to make Section 180(c) funding available to the states and tribes to prepare for shipments of spent nuclear fuel to centralized storage facilities, whether public or private, and to facilities licensed and operated as part of DOE's Global Nuclear Energy Partnership (GNEP).

Specific Comments

Page	Section	Comment
40140	Purpose and Need for Agency Action	It would be helpful to assign some target dates for DOE's milestones for conducting the pilot, issuing a revised draft policy and procedures, and finalizing the policy and procedures.
40141	Policy Statement	Why were the definitions of Public Safety Official and Safe Routine Transportation dropped? In some states it will be important for officials to have these definitions in order to properly implement Section 180(c).
	Funding Mechanism	<p>While many states have had good experiences with grants.gov, it should not be the sole option for applying for 180(c) grants. In addition, DOE should provide technical assistance on grants.gov to states and tribes to help them learn how to use the system.</p> <p>It would be helpful to provide additional detail on the funding mechanism and the process. Will the 5-year projects and 2-year work plans be rolling? If not, when will states and tribes be expected to update their five-year projects and two-year work plans? Will states and tribes need to submit an application every year or just every two years? Will states and tribes be allowed to carry over funding from year to year?</p>
	Basis for Cost Estimate/Grant Funding Allocation to States	In this section, DOE says it will "adjust annually for inflation" the maximum amounts of the assessment and planning grants (\$200,000) and the training grants (\$100,000). Given that it will be several years before this policy is implemented, when will the annual adjustments begin?
40142	Basis for Cost Estimate/Grant Funding Allocation to States	This section, as written, creates the impression that all states will receive a check for the same base grant amount, with an additional check issued to cover variable funding, if available. This is not what the topic group intended. The intention was to combine the base grant amount (which would be the same for each state) with the variable amount (determined by the allocation formula) to identify the total funding for which each state would be eligible to apply. The applicants would have to justify the need for that level of funding in order to receive it. If some states either cannot justify the need or do not apply for the full funding for which they are eligible, DOE could use the leftover funding to cover any unmet needs. Of course, implementing the approach described above will first require DOE to settle on a total dollar amount for 180(c) awards in a given year so that the "eligibility amounts" can be calculated. DOE should consult with the states and tribes to determine what level of funding would be sufficient for the 180c grant program.

		<p>The Midwest supports the use of the proposed allocation formula for determining the variable component of the annual training grants.</p> <p>DOE will need to make sure the population data in TRAGIS is updated regularly to reflect the most recent Census data.</p> <p>Including shipping sites in the formula is intended to take into account "the additional training burden placed on States that must prepare for point-of-origin inspections." Inspections will be required at Intermodal transfer sites, therefore it is important to include these sites as "shipping sites." Also, if inspections are normally warranted when dedicated trains are assembled in marshalling yards, then these locations should also be considered "shipping sites."</p>
40142	Eligibility and Timing of the Grants Program	<p>The Midwest supports DOE's decision to allow the states to determine who will administer 180(c) funding within the state.</p> <p>The letters to the governors should be accompanied by as much information as possible to help the states prepare their assessments. For example, DOE should enclose information on the routes to be used and potential schedules. To help the states prepare their five-year projects, it will also be important to provide information on how much funding the state is eligible to apply for over the next five years.</p> <p>It would be a good idea to send copies of the letters to the members of the SRG committees from that state.</p> <p>The policy should state that successive letters of eligibility will be sent to the state agency or staff that administers Section 180(c), as designated by the governor.</p> <p>The policy should state that, while the assessment and planning grants will be available to states four years prior to the first shipment, the states are not required to apply for these grants four years in advance. Similarly, states will not be required to apply for training grants three years prior to a scheduled shipment, but they will have that option.</p>
40143	Allowable activities	<p>The list of allowable activities should include training for security escorts.</p>
		<p>The title of 49 CFR 397 has a typo in it. The apostrophe should be a semi-colon.</p>
	Table 1 – Assessment and Planning Grant	<p>In the instructions, item "f" asks applicants to "describe how the proposed grant funding does not supplant or duplicate existing funding from Federal or State sources." It would be better to ask applicants to explain how the funding will supplement the other funding or be coordinated with it. Also, this instruction appears to be the provision DOE refers to later when it says the policy addresses state fees. The reference is not clear, however, therefore the instruction should be changed to explicitly refer to state fees as an example of a "State source" of funding.</p>

40144	Table 1 – Assessment and Planning Grant	Given the nature of assessment and planning, it is not likely that local public safety officials will be involved in developing the grant application. We therefore recommend, under “prepare public safety officials of appropriate units of local government,” deleting item “a” in the instruction.
40144	Table 2 – Training Grant	<p>The above comment regarding item “f” in the assessment and planning grant instructions applies to item “c” in the instructions for the training grant.</p> <p>We recommend replacing item “b” under “Help prepare public safety officials of appropriate units of local government” with the following: “Whether local public safety officials were consulted in developing the grant application.”</p> <p>In item “b” under “Prepare sufficiently to reassure the public of adequate preparedness,” applicants are asked to describe “what activities and measures, if any, will be taken to reassure the public of adequate preparedness.” These “activities and measures” do not appear eligible for funding under this draft policy.</p>

Answers to Questions

1(a) Would \$200,000 be an appropriate amount for the assessment and planning grant to conduct an initial needs assessment?

It would be appropriate for a state to receive up to \$200,000 to conduct an initial needs assessment. As noted earlier, applicants must justify their need for the funding they request, therefore if a state can justify the need for \$200,000, then it would be appropriate for DOE to award that level of funding.

1(b) Should the amount be the same for each eligible State and Tribe?

Again, if applicants are required to justify their need for the requested funding, there is no reason not to have each state eligible for the same amount for assessment and planning.

1(c) Would there be a need to update the initial needs assessment and, if so, at what intervals and should funding be made available for this purpose and in what amount?

Yes, there would be a need to update the initial needs assessment and DOE should make 180(c) funding available for that purpose. The interval at which the updates are needed will depend on each state’s specific circumstances (e.g., lapses in shipments, new routes being added). Like the appropriate interval, the amount of funding available to each state for updating the initial needs assessment at any time, for any reason, will depend on the circumstances. Because assessment and planning activities may be continued under the training grants, it might not be necessary in every case to provide a new assessment and planning grant of \$200,000 to a state. In some situations, however, a state might legitimately request the full \$200,000. As we note throughout our comments, DOE should make the funding available as long as applicants can justify their request.

2(a) Would \$100,000 be an appropriate amount for the base award annual training grant?

Consistent with our earlier statements, if a state can justify the need for \$100,000, then it would be appropriate for DOE to award that level of funding.

2(b) Recognizing that, after commencement of shipments through an eligible State or Tribe, training to maintain capacity may become less costly with increased expertise and efficiency, should the base amount of subsequent annual training grants be adjusted downward to reflect the number of years that annual training grants have been received?

No. The premise is false – training to maintain capacity does not become less costly with increased expertise. Not only is there significant turnover in the responder community, but refresher training will take the same effort regardless of how much expertise the trainees have.

2(c) What should be the allocation of available appropriated funds for a fiscal year between the base amount and the variable amount of the annual training grants?

If we are establishing that a base grant of up to \$100,00.00 will be available for all eligible states, then the concept of a predetermined overall allocation between base and variable amounts does not make sense. Certainly, funding should be available for each component of the grant, and we recommend that the total funding available under the variable grant be at least equivalent to that available under the base. If applicants do not request their full share, or they cannot justify the need for the amount for which they are eligible, then the left over funding should be put toward funding any unmet needs.

2(d) Should the entire training grant be variable based on the funding allocation formula described herein?

No. The base grants will help states and tribes to provide basic program capabilities.

3(a) Should the amount of funding be adjusted where a route forms a border between two States, a State and a Tribal reservation, or two Tribal reservations?

If a state can justify its request for funding, then DOE should provide the funding.

3(b) Should States or Tribes with mutual aid responsibilities along a route outside their borders be eligible for 180(c) grants on the basis of the mutual aid agreement?

See our answer to 3(a).

3(c) If so, how should the amount of funding be calculated, and should the calculation take into account whether or not the State or Tribe would otherwise be eligible for a grant?

The applicant should request funding to cover the proposed activities. If the applicant can justify the need, DOE should provide the funding.

3(d) Should the State or Tribe that received notification of eligibility from DOE indicate in their grant application that a neighboring State or Tribe has a mutual aid agreement along a particular route, whereupon DOE would then notify the neighboring State or Tribe of its eligibility?

DOE should work with the states in advance of 180(c) implementation to determine where these types of situations exist.

4(a) Do assessment and planning grants need to be undertaken four years prior to an initial scheduled shipment through a State or Tribe's jurisdiction?

Some states might not wish to conduct assessment and planning four years in advance, but others should have the option of doing so, if they choose.

4(b) Do training grants need to commence three years prior to a scheduled shipment through a State or Tribe's jurisdiction?

As stated above, not all states will begin training three years in advance, but some states will and they should have the option of doing so.

4(c) Do training grants need to be provided every year that shipments are scheduled?

States should be eligible to apply for training grants annually.

5(a) Should the Section 180(c) grants be adjusted to account for fees levied by States or Tribes on the transportation of spent nuclear fuel or high-level radioactive waste through their jurisdiction?

The Midwest endorses the original recommendation of the Section 180(c) Topic Group. DOE should not deduct the cost of state fees from a state's Section 180(c) award unless separately negotiated with the state.

5(b) How should DOE determine if a fee covers all or part of the cost of activities allowed under Section 180(c) grants?

DOE should ask the states to document in their applications whether they will use any part of their fees to pay for the proposed training activities described in the application.

5(c) Is the language in this policy, requiring States and Tribes to explain in their grant application how the fees and Section 180(c) grant awards are separate and distinct, sufficient to prevent DOE from paying twice for the same activity?

The language of the policy needs to more explicitly refer to state fees (rather than just "State sources" of funding). With that change, the language will be sufficient to prevent DOE from paying twice for the same activity.

6(a) How should Section 180(c) grants be adjusted to reflect other funding or technical assistance from DOE or other Federal agencies for training for safe routine transportation and emergency response procedures?

The criteria for evaluating applications for both assessment and planning grants and the training grants specifically refer to training "for the increment of need specific to NAWPA shipments." The applications for funding will, therefore, reflect the impact of other funding and assistance on training activities.

6(b) In particular, how should DOE account for TEPP and other similar programs that provide funding and/or technical assistance related to transportation of radioactive materials?

DOE should encourage states to make use of the resources that are currently available through TEPP. However, states should have the flexibility to decide to what extent and in what manner they will use these resources. For example, states should be encouraged to use the MERRTT modules when appropriate, but they should not be expected to have

TEPP trainers conduct the training. It should also be noted that reducing 180(c) awards to states that utilize TEPP could create an incentive for states to stop using TEPP.

6(c) To what extent is Section 180(c) funding necessary where funding and/or technical assistance are being or have been provided for other DOE shipping campaigns such as to DOE's Waste Isolation Pilot Plant?

Section 180(c) funding will still be necessary for some states regardless of whether they have historically received other DOE funding or technical assistance. As noted earlier, the criteria for evaluating applications for both assessment and planning grants and the training grants specifically refer to training "for the increment of need specific to NWPA shipments." The applications for funding will, therefore, reflect the impact of other funding and assistance on training activities.